

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MICHAEL WARD d/b/a/ BRAINTEASER
PUBLICATIONS,

Plaintiff,

- against -

BARNES & NOBLE, INC., STERLING
PUBLISHING CO., INC., FRANCIS HEANEY,
and PATRICK BLINDAUER,

Defendants.

Civil Action No. 13-cv-7851 (JMF)

**DECLARATION OF LOUIS S. EDERER
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

LOUIS S. EDERER declares as follows, under penalty of perjury:

1. I am an attorney admitted to the Bar of the State of New York and the Bar of this Court, and I am a member of the law firm of Arnold & Porter LLP, attorneys for Defendants Barnes & Noble, Inc., Sterling Publishing Co., Inc. ("Sterling"), Francis Heaney, and Patrick Blindauer (collectively, "Defendants").

2. I submit this declaration in support of Defendants' Motion for Summary Judgment.

3. Attached hereto as Exhibit 1 is a true and correct copy of Plaintiff's Complaint, filed November 5, 2013 (Defendants' Deposition Ex. 1).

4. Attached hereto as Exhibit 2 is a true and correct copy of Plaintiff's provisional patent application for "Scratch Hangman", filed with the New Zealand Patent Office in February 1994 (Defendants' Deposition Ex. 13).

5. Attached hereto as Exhibit 3 is a true and correct copy of excerpts from Plaintiff's *Scratch Hangman Puzzle Book* (the "New Zealand Book"), which was published in New Zealand in 2000 (Defendants' Deposition Ex. 3).

6. Attached hereto as Exhibit 4 is a true and correct copy of excerpts from the deposition transcript of Michael Ward, taken on March 20, 2014, along with the entire word index.

7. Attached hereto as Exhibit 5 is a true and correct copy of Plaintiff's Supplemental Response to [Defendants'] Request for the Production of Documents, dated March 17, 2014.

8. Attached hereto as Exhibit 6 is a true and correct copy of Defendants' First Set of Interrogatories Directed to Plaintiff Michael Ward d/b/a Brainteaser Publications, dated January 6, 2014.

9. Attached hereto as Exhibit 7 is a true and correct copy of Plaintiffs' Response to Defendants [sic] First Set of Interrogatories, dated February 26, 2014.

10. Attached hereto as Exhibit 8 is a true and correct copy of a printout of the webpage "Welcome to Sterling Publishing", available at <http://www.sterlingpublishing.com/> (DEFS0000001).

11. Attached hereto as Exhibit 9 is a true and correct copy of a letter from Plaintiff to Frances Gilbert at Sterling, dated June 11, 2004 (Defendants' Deposition Ex. 6).

12. Attached hereto as Exhibit 10 is a true and correct copy of an email chain between Peter Gordon (Sterling's puzzle and games editor) and Plaintiff, dated July 7, 2004 (DEFS000237-238; Defendants' Deposition Ex. 12).

13. Attached hereto as Exhibit 11 is a true and correct copy of the initial Publishing Agreement between Sterling and Plaintiff, dated October 14, 2004 (DEFS000223–228 Defendants' Deposition Ex. 5).

14. Attached hereto as Exhibit 12 are a true and correct copy of an email from John M. Woodside (Sterling) to Plaintiff, dated February 16, 2005, and a true and correct excerpt of the attachments thereto (DEFS002305; DEFS002355–2357; Defendants' Deposition Ex. 11).

15. Attached hereto as Exhibit 13 is a true and correct copy of an email chain between Peter Gordon and Plaintiff, dated February 16-22, 2005 (DEFS000389–391; Defendants' Deposition Ex. 10).

16. Attached hereto as Exhibit 14 is a true and correct copy of excerpts from a book authored by Plaintiff and published by Sterling in 2005, as part of its "Scratch & Solve" series, entitled *Hangman #1*.

17. Attached hereto as Exhibit 15 is a true and correct copy of printout from Sterling's website reflecting various books published under Plaintiff's name in Sterling's "Scratch & Solve" Hangman series, available at [http://www.sterlingpublishing.com/catalog?query=hangman&x=\)&y=\)&limit=10§ion=catalog&order_by=author](http://www.sterlingpublishing.com/catalog?query=hangman&x=)&y=)&limit=10§ion=catalog&order_by=author) (DEFS000002–6).

18. Attached hereto as Exhibit 16 is a true and correct copy of seven Amendments to Author Agreements between Sterling and Plaintiff, dated December 7, 2007; May 15, 2008; October 3, 2008; October 6, 2008; October 25, 2010; April 13, 2011; and October 19, 2011 (DEFS002685–2694).

19. Attached hereto as Exhibit 17 is a true and correct copy of the Publishing Agreement between Sterling and Plaintiff, dated April 12, 2012 (DEFS002695–2700).

20. Attached hereto as Exhibit 18 is a true and correct copy of the Publishing Agreement between Sterling and Plaintiff, dated January 22, 2013 (DEFS002701–2706).

21. Attached hereto as Exhibit 19 are true and correct copies of U.S. copyright registration certificates issued in Plaintiff's name for the "text" or "entire text" of certain of the books Sterling published under his authorship as part of Sterling "Scratch & Solve" Hangman series (DEFS000186-192; DEFS000181; DEFS000193-194; DEFS000196; DEFS000195; DEFS000197–198; Defendants' Deposition Ex. 7).

22. Attached hereto as Exhibit 20 is a true and correct copy of printout from the U.S. Copyright Office's website reflecting Ward's U.S. copyright registrations for the "text" or "entire text" of books Sterling published under his authorship as part of Sterling "Scratch & Solve" Hangman series, available by searching at <http://cocatalog.loc.gov/>.

23. Attached hereto as Exhibit 21 is a true and correct copy of the Publishing Agreement between Sterling and Francis Heaney, dated May 28, 2009 (DEFS002707–2715).

24. Attached hereto as Exhibit 22 is a true and correct copy of excerpts from a complained-of book authored by Defendant Francis Heaney and published by Sterling in 2010 as part of its "Scratch & Solve" series, entitled *Trivia Hangman* (Defendants' Deposition Ex. 16).

25. Attached hereto as Exhibit 23 is a true and correct copy of the Publishing Agreement between Sterling and Patrick Blindauer, dated August 24, 2010 (DEFS002716–2722).

26. Attached hereto as Exhibit 24 is a true and correct copy of excerpts from a complained-of book authored by Defendant Patrick Blindauer and published by Sterling in 2011 as part of its "Scratch & Solve" series, entitled *Hollywood Hangman* (Defendants' Deposition Ex. 167).

27. Attached hereto as Exhibit 25 is a true and correct copy of excerpts from a complained-of book published by Sterling in 2013 as part of its “Scratch & Solve” series, under the pseudonym “Jack Ketch”, entitled *Science Hangman*.

28. Attached hereto as Exhibit 26 is a true and correct copy of excerpts from a complained-of book published by Sterling in 2013 as part of its “Scratch & Solve” series, under the pseudonym “Jack Ketch”, entitled *Geography Hangman*.

29. Attached hereto as Exhibit 27 is a true and correct copy of excerpts from a complained-of book published by Sterling in 2013 as part of its “Scratch & Solve” series, under the pseudonym “Jack Ketch”, entitled *Spelling Bee Hangman*.

30. Attached hereto as Exhibit 28 is a true and correct copy of printouts from Barnes & Noble’s website reflecting *Hangman #1*, *Trivia Hangman*, *Hollywood Hangman*, *Spelling Bee Hangman*, *Geography Hangman*, and *Science Hangman*, as well as their respective publication dates, available by searching at <http://www.barnesandnoble.com> (DEFS000076–78; DEFS000150–52; DEFS000145–46; DEFS000153–58).

31. Attached hereto as Exhibit 29 is a true and correct copy of U.S. Trademark Registration No. 3,168,718 for Sterling’s SCRATCH & SOLVE trademark, registered on the Principal Register of the U.S. Trademark Office on November 7, 2006 (DEFS000210).

32. Attached hereto as Exhibit 30 is a true and correct copy of a handwritten document entitled “‘Scratch-Hangman’ Copyright in a Nutshell”, dated March 17, 2014, and produced by Plaintiff at his March 20, 2014 deposition (Defendants’ Deposition Ex. 9).

33. Attached hereto as Exhibit 31 is a true and correct copy of excerpts from a book published by Lee Publications in 1986 entitled *Yes & Know Invisible Ink Game & Quiz Book* (DEFS000174–176).

34. Attached hereto as Exhibit 32 is a true and correct copy of excerpts from the May 1999 edition of *World of Puzzles* magazine (DEFS002793–2796).

35. Attached hereto as Exhibit 33 is a true and correct copy of a printout of the results page for a Google Image search of the term “hangman game” (DEFS000163–167).

36. Attached hereto as Exhibit 34 is a true and correct copy of a printout of the Wikipedia entry for “Hangman (game)”, available at [http://en.wikipedia.org/wiki/Hangman_\(game\)](http://en.wikipedia.org/wiki/Hangman_(game)) (DEFS000159–162).

37. Attached hereto as Exhibit 35 is a true and correct copy of an excerpt of Plaintiff’s Memorandum Of Law In Opposition To Defendant’s Motion To Dismiss at 14 n.2, *Ward v. Andrews McMeel Pub., LLC*, 963 F. Supp. 2d 222 (S.D.N.Y. 2013) (No. 12-cv-07987-PAC).

I declare under penalty of perjury that the foregoing is true and correct.

Executed in New York, New York, this 30th day of May, 2014.


LOUIS S. EDERER